TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — FEDERAL AGENCY: TAXATION BY A STATE OF A DEBT OWED BY THE UNITED STATES. — The relator was assessed for a property tax on a debt due from the United States, an unpaid balance on fully performed war contracts. He contended that this debt is not taxable by the state. *Held*, that the debt is taxable. *People* v. *Cantor*, 187 N. Y. Supp. 467 (Sup. Ct.).

It may be urged that this obligation ought not to be distinguished, analytically, from other federal contractual obligations which are exempt, under the Constitution, from state taxation. Such taxation of federal credit in the form of government securities has been held unconstitutional as an undue interference with federal functions. *Weston* v. *The City Council of Charleston*, 2 Pet. (U. S.) 449; *Farmers' Bank* v. *Minnesota*, 232 U. S. 516. See 27 HARV. L. REV. 769. In the principal case credit is given the government, and the absence of certain paper evidence should be immaterial. The validity of such a tax must depend finally on a balance of the economic and political interests of state and federal governments and their constituencies. The imposition by a state of burdens on the credit of the United States will presumably increase the cost of such credit. Any gain to the state by such a measure should thus cause an equal loss to the United States. Federal taxes will be correspondingly increased. The net loss to the national community will be the expense of the duplicate collection involved. To permit such an imposition might, further, give the states a dangerous power to embarrass federal operations. *Cf. M'Culloch* v. *Maryland*, 4 Wheat. (U. S.) 316. Whether a given interference by state taxation with federal operations is sufficiently serious to warrant exemption is thus finally a question of degree. As *a priori* politics and political economy are uncertain, it is impossible to be dogmatic in urging that the tax in question is unconstitutional. *Cf. Fidelity & Deposit Co.* v. *Pennsylvania*, 240 U. S. 319; *Indian Oil Co.* v. *Oklahoma*, 240 U. S. 522; *In re Skelton L. & Z. Co.'s Gross Production Tax*, 197 Pac. 495 (Okla.).

TAXATION — PARTICULAR FORMS OF TAXATION — STATE INHERITANCE TAX ON STOCK OF A NON-RESIDENT IN A FOREIGN CORPORATION OWNING REALTY WITHIN THE STATE. — A New York statute taxes the transfer by will or intestate law of a non-resident decedent's shares in a foreign corporation owning realty in New York, in the proportion which that realty bears to the entire property of the corporation (1909 NEW YORK LAWS, c. 62, § 220 (2); CONSOL. LAWS, c. 60, art. 10.) A non-resident testator left in New York a stock certificate representing shares in a foreign corporation owning realty in New York. His executor resists a tax on the transfer of these shares on the ground that the statute is unconstitutional. *Held*, that the statute is constitutional. *Matter of McMullen*, 114 Misc. 505, 187 N. Y. Supp. 248.

Jurisdiction to impose an inheritance tax depends upon control over some essential element in the transfer of the decedent's property. *Welch* v. *Treasurer & Receiver General*, 223 Mass. 87, 111 N. E. 774; *Matter of Hull*, 111 App. Div. 322, 97 N. Y. Supp. 701. This principle, already stretched in cases where a decedent's extra-state personalty is taxed at his domicil, must be abandoned altogether to reach the result of the principal case, since the decedent and the corporation were both beyond the control of New York. The presence of corporate realty within the state should be immaterial, for the shareholder not only does not own it, but may in a given instance have no rights whatever against it. *Parker* v. *Bethel Hotel Co.*, 96 Tenn. 252, 34 S. W. 209; *Greenleaf* v. *Board of Review*, 184 Ill. 226, 56 N. E. 295. For this reason, the fact of such presence has justly and uniformly been held an insufficient basis for taxing transfers of foreign-owned shares in foreign corporations. *Welch* v. *Treasurer & Receiver General*, *supra*; *Oakman* v. *Small*, 282 Ill. 360, 118 N. E. 775; *State* v. *Dunlap*, 28 Idaho, 784, 156 Pac. 1141. See Joseph H. Beale, "Jurisdiction to

Tax," 32 HARV. L. REV. 587, 628. The state cannot reasonably urge that value incidentally imparted to the stock by the state's protection of corporate realty is ground for taxation. Nor did the mere presence of the certificate within the state make its transfer taxable. *Kennedy* v. *Hodges*, 215 Mass. 112, 102 N. E. 432; *People* v. *Griffith*, 245 Ill. 532, 92 N. E. 313. But see *People* v. *Reardon*, 184 N. Y. 431, 77 N. E. 970; *Stern* v. *Queen*, [1896] 1 Q. B. 211.

TAXATION — PARTICULAR FORMS OF TAXATION — TAX ON ALL USE AS AN EXCISE TAX. — A statute provided that every one engaged in the business of owning or storing distilled spirits in bonded warehouses, or removing them therefrom, should pay a license tax for each gallon stored or removed from bond or transferred under bond out of the state. (1920 ACTS OF KENTUCKY, c. 13.) The state constitution provided that "taxes shall be uniform upon all property of the same class subject to taxation." (KENTUCKY CONSTITUTION, § 171.) The plaintiff, owner of a large quantity of whiskey stored in bonded warehouses, sued to enjoin collection of the tax, on the ground of unconstitutionality. Distilled spirits had not been made a special class for property taxation. *Held*, that the statute was unconstitutional. *Craig* v. *E. H. Taylor, Jr., & Sons*, 232 S. W. 395 (Ky.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 70.

TAXATION — WHERE PROPERTY MAY BE TAXED — EQUITABLE INTEREST OF RESIDENT *CESTUI* IN FOREIGN TRUST OF INTANGIBLES. — Resident *cestuis* were taxed in Vermont on their interest in certain intangible property held in trust for them by a Massachusetts trustee. It was conceded that the property was taxable in Massachusetts. *Held*, that the tax was properly levied. *City of St. Albans* v. *Avery*, 114 Atl. 31 (Vt.).

Although on strict legal theory a tax is not unconstitutional simply because it results in duplicate taxation, that result was one of the considerations which led the Supreme Court to hold that a tax at the domicil of the owner on tangible personalty with an extra-state *situs* violates the due process clause. *Union Refrigerator Co.* v. *Kentucky*, 199 U. S. 194. But the court has upheld a tax at the domicil of the owner on intangible property having also an extra-state "business *situs*." *Fidelity Trust Co.* v. *Louisville*, 245 U. S. 54. See 31 HARV. L. REV. 786. One consideration behind this decision is that unless the general rule allowing a tax at the domicil of the creditor is upheld indiscriminately, much intangible property is likely to escape taxation altogether. See *Union Refrigerator Co.* v. *Kentucky*, *supra*, at 205. In the principal case it is almost certain that the fund will be taxed at the domicil of the creditor-trustee; and the actual decision exposes it to duplicate, or if there is a "business *situs*" in a third state, to triplicate taxation. Decisions in state courts are in accord with the principal case. *Hunt* v. *Perry*, 165 Mass. 287, 43 N. E. 103; *Wise* v. *Comm.*, 122 Va. 693, 95 S. E. 632. But whether practical considerations will cause the Supreme Court to grant relief depends upon the question how great the hardship must be before strict legal theory will bend to the economic good. The principal case lies close to the line. The Supreme Court has upheld a tax on the income from similar property. *Maguire* v. *Tax Commissioner*, 230 Mass. 503, 120 N. E. 162; aff'd 253 U. S. 12. But income tax decisions are not authority for other tax cases.

TORTS — NEGLIGENCE — DUTY OF CARE — LIABILITY OF OCCUPIER OF PREMISES TO TRESPASSER. — A springboard attached at its base to the property of the defendant railroad, extended out for several feet over the waters of a public river. The plaintiffs' intestate, swimming in the river with